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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AMAN GUPTA, AMIT MAHESHWARI, and
JAMES A. YENERICH

Appeal 2009-013221
Application 09/748,520
Technology Center 2100

Before MAHSHID D. SAADAT, GREGORY J. GONSALVES,
and ERIC B. CHEN, *Administrative Patent Judges*.

GONSALVES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-35, which are all the claims pending in this application. (App. Br. 4.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Examiner's Rejections

Claims 1-7 and 22-25 stand rejected under 35 U.S.C. § 102(e) as anticipated by Christensen (US 2002/0156694 A1, Oct. 24, 2002). (Ans. 3-4.)

Claims 8-21 and 26-35 stand rejected under 35 U.S.C. § 103(a) as obvious based on Christensen and Parad (US 5,369,570, Nov. 29, 1994). (Ans. 5-7.)

Appellants' Contentions

Appellants contend that Christensen is not prior art because they established a date of conception prior to the filing date of Christensen with a Declaration under 37 C.F.R. § 1.131 by one of the inventors, James Yenerich, along with its accompanying exhibit (*i.e.*, Exhibit A). (App. Br. 7-11.)

ISSUE

Has the Examiner erred in finding that Yenerich's declaration and Exhibit A does not establish that Christensen is not prior art?

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusions. We adopt as our own the findings and reasons set forth by the Examiner in the action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner's Answer (Ans. 7-8) in response to Appellants' Appeal Brief. But we highlight and address specific findings and arguments regarding Yenerich's Declaration and Exhibit A for emphasis as follows.

We find that the Examiner properly found that Yenerich's declaration and Exhibit A are not sufficient to establish a date of conception prior to the effective filing date of Christensen. To establish conception of a claim, a party must show possession of all the limitations of that claim. (M.P.E.P. § 2138.04 (*citing Coleman v. Dines*, 754 F2d 353 (Fed. Cir. 1985).) Moreover, "[c]onception must be proved by corroborating evidence." (*Id.*) The corroborating evidence (i.e., the Exhibit A) presented by Appellants does not show that Appellants were in possession of the claim limitation of "counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available and displaying a listing of each product and when the product is available." Rather, as explained by the Examiner, the relevant portions of Exhibit A "under 'CT Offering' merely shows the status of all products for example 'Call for availability' or 'Immediate shipment' or 'Shipment within 90 days'" (Ans. 7.) Accordingly, we affirm the Examiner's rejections of the claims based on Christensen.

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DECISION

The decision of the Examiner rejecting claims 1-21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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